

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

<p>FUSION ELITE ALL STARS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Varsity Brands, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02600-SHL-tmp <b>Jury Trial Demanded</b></p>
<p>AMERICAN SPIRIT AND CHEER ESSENTIALS, INC., <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Varsity Brands, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02782-SHL-tmp <b>Jury Trial Demanded</b></p>
<p>JESSICA JONES, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Varsity Brands, LLC; <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02892-SHL-tmp <b>Jury Trial Demanded</b></p>

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE  
ORDER REQUIRING COORDINATION AND LIMITING TIME  
FOR THIRD PARTY DEPOSITIONS**

Defendants file this short reply to address two issues set out in Plaintiffs' Response in Opposition to Defendants' Motion for Protective Order.

First, Plaintiffs concede that the *Jones* and *American Spirit* Plaintiffs must seek leave to take any further depositions in these cases because they have each already exceeded the ten

depositions allowed under Rule 30. *See* Response, ECF No. 228 at PageID 4281. While the *Jones* Plaintiffs have moved for leave to take eighteen depositions of defendants Jeff Webb, Charlesbank, and Bain (*see Jones*, ECF No. 227), they have not moved for leave to take the deposition of any third-party witness. That leaves the *Fusion Elite* Plaintiffs as the only parties with valid deposition notices for these third parties. And in *Fusion Elite*, the Court’s Discovery Order limits all 30(b)(1) depositions to seven hours and sets clear rules for how those hours will be allocated when parties cross-notice depositions.<sup>1</sup> *See Fusion Elite*, ECF No. 89 at PageID 667.

That should be the end of the story. Instead, Plaintiffs make the extraordinary argument that those limitations are “irrelevant” and that they are free to take third-party depositions of up to *fourteen hours over two days* simply because the deponent is willing to sit for that long. ECF No. 228 at PageID 4281, 4280. Plaintiffs’ position that they may ignore the Federal Rules of Civil Procedure and this Court’s Discovery Order at their whim is remarkable. It is also without any basis and the Court should, respectfully, reject it out of hand.

Second, Plaintiffs’ Response falsely implies that Defendants agreed to Ms. Cota’s deposition lasting more than a single day of seven hours. ECF No. 228 at PageID 4279 (“Defendants had agreement on Ms. Cota’s deposition, with the approval of Ms. Cota’s counsel. Defendants should not now be able to go back on that agreement, which Ms. Cota remains prepared to honor.”). Plaintiffs did agree to move the date for Ms. Cota’s deposition to accommodate undersigned counsel’s schedule, which was appreciated. But in the same email exchange

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<sup>1</sup> In their Response, Plaintiffs argue that Defendants have not provided “any authority that dictates that one party should automatically receive one half of another party’s deposition time.” *Fusion Elite*, ECF No. 228 at PageID 4280. Defendants have not asked for half of the deposition time of any third-party witness so far. In any event, the authority for allocating time when Defendants cross-notice a deposition is the Court’s Discovery Order in *Fusion Elite*. ECF No. 89.

referenced in and attached to Plaintiffs' Response, Defendants very clearly stated their opposition  
Ms. Cota's deposition lasting longer than a single day of seven hours:

We do not see any reason why Ms. Cota's deposition (and, for that matter, the deposition of any other third party witness) should be longer than a single day, particularly given the complexities of scheduling between now and April 18<sup>th</sup>, the burden and expense Defendants are incurring in light of the high number of depositions Plaintiffs are seeking, and the requirement for Plaintiffs to coordinate on discovery. Defendants reserve their rights to seek appropriate relief on the issue with the court.

ECF No. 230-9 at PageID 4347. After unsuccessfully attempting to resolve the matter without the Court's involvement, Defendants filed their motion for protective order. Defendants are not "go[ing] back" on an agreement for a two-day deposition because such agreement never existed.

For these reasons and the reasons explained in the Motion for Protective Order, Defendants respectfully request that the Court issue a protective order requiring Plaintiffs to coordinate as to all future third-party depositions and setting time limits for such depositions as set out in the Motion.

Dated: April 4, 2022

Respectfully submitted,

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